



Comptroller General
of the United States

Washington, D.C. 20548

J. Westfall

Decision

Matter of: Total Counseling Service

File: B-240774

Date: December 3, 1990

Aubrey H. Jolley for the protester.
E.L. Harper, Department of Veterans Affairs, for the agency.
Jennifer Westfall-McGrail, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office generally will not review a nonresponsibility determination where a small business is concerned since by law the Small Business Authority has conclusive authority to determine the responsibility of a small business.
2. Protest of award to another offeror is dismissed as untimely where not filed within 10 working days after the protester learned of the award.
3. General Accounting Office does not conduct investigations as part of its bid protest function.

DECISION

Total Counseling Service (TCS) protests the rejection of its proposal under request for proposals (RFP) No. 674-6-90, issued by the Department of Veterans Affairs (VA), Olin E. Teague Veterans Center, Temple, Texas, for readjustment counseling services for Vietnam veterans. The protester contends that the VA incorrectly determined that its primary service provider was not properly licensed. The protester also objects to the fact that the VA awarded a contract to another offeror prior to making a decision concerning its (i.e., TCS') responsibility.

We dismiss the protest.

The RFP requested offerors to provide readjustment counseling services to eligible Vietnam veterans residing in Bell, Coryell, and Hays counties, Texas. Since the purpose of the contracts was to make counseling available to the veterans in the communities in which they live, the RFP required that the

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offerors themselves be located in one of the counties to be served. Offerors were asked to quote a price per session for three types of therapy (individual, group, and family) for the following categories of mental health providers: psychiatrists, Ph.D. psychologists, licensed social workers, and licensed professional counselors. The RFP provided that in the evaluation of proposals, technical considerations would be worth 300 points and price worth 75. The solicitation further indicated that the offeror with the highest point total would be first in line for award, but that additional contracts would be awarded to lower ranked offerors if needed.

The VA indicates that it intended to award two contracts for services to veterans residing in Bell and Coryell counties, one to a provider located in Temple (to serve the veterans in east Bell county) and the other to a provider located in Killeen (to serve the veterans in west Bell and Coryell counties). Four offerors submitted proposals: Associated Professional Counselors, which is located in Temple; Warren Townsend/Professional Counseling Service (Townsend) and Quo Vaditis, Inc., both of which are located in Killeen; and the protester, which is located in Copperas Cove, a town 15 miles west of Killeen in Coryell County. After discussions and submission of best and final offers, the VA ranked the offerors located in the Killeen area^{1/} in the following order: Townsend, first; TCS, second; and Quo Vaditis, third. Associated Professional Counselors was the only offeror located in the Temple area. Based on these rankings, the VA decided to award a contract to provide services in Killeen to Townsend and a contract to provide services in Temple to Associated Professional Counselors.

After awarding to Townsend, the agency continued to consider the possibility of an additional award to TCS to serve the veterans in Coryell County. (The VA recognized that due to its location in Copperas Cove, TCS would be more accessible to veterans residing in Coryell County than Townsend, which is located in Killeen in Bell County.) The agency therefore proceeded to consider the qualifications of the protester's proposed personnel.

The contracting officer determined that the protester's primary service provider, who was to provide 60 percent of the services, did not qualify as a Ph.D. psychologist since his degree was obtained from an institution which was operating illegally. The contracting officer further determined that this individual would not, in the alternative, qualify as a licensed professional counselor since he did not have the

^{1/} The agency considered Copperas Cove where the protester is based to be in the Killeen area.

proper state license. She therefore rejected the protester's offer.

TCS argues first that its primary service provider is properly licensed to provide the requested counseling services since he has been certified by the state of Texas as an Alcohol and Drug Abuse Counselor. In reviewing this allegation, the agency determined that the contracting officer had erred in failing to refer her determination--that TCS, a small business, was nonresponsible based on the qualifications of its primary source provider--to the Small Business Administration (SBA) for consideration under the Certificate of Competency (COC) procedures; the agency therefore instructed her to do so.

We generally will not review a nonresponsibility determination where a small business is concerned since by law the SBA has conclusive authority to determine the responsibility of a small business by issuing or failing to issue a COC. See 15 U.S.C. § 637(b)(7)(A) (1988); 4 C.F.R. § 21.3(m)(3) (1990). Since the contracting officer's nonresponsibility decision is subject to a conclusive determination by the SBA, we will not consider TCS' challenge to the contracting officer's decision. Custom Research, Inc.--Recon., B-238976.2, June 14, 1990, 90-1 CPD ¶ 567.

The protester also complains that the VA improperly awarded a contract to Townsend prior to making a decision concerning TCS' responsibility. TCS indicates that the contracting officer informed it of the award to Townsend on May 25, 1990. We dismiss this basis of protest as untimely. Our Bid Protest Regulations require that a protest involving other than an alleged solicitation impropriety be filed not later than 10 working days after the basis of protest is known. 4 C.F.R. § 21.2(a)(2). Thus, to be timely, any protest of the award to Townsend would have had to be filed by June 11, 10 working days after TCS was informed of the award decision on May 25. Instead, TCS waited until August 13 to protest to our Office.

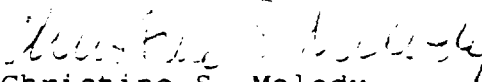
In any event, we see nothing objectionable in the agency's decision to award to Townsend prior to making a decision concerning TCS' responsibility given that Townsend was in line for award ahead of TCS based on its higher combined technical/cost score, which TCS has not challenged. In addition, since the solicitation provided for the possibility of multiple awards, an award to Townsend did not preclude an award to TCS.

TCS further objects to the content of certain advertisements issued by the VA concerning the services available through its readjustment counseling contractors. The protester notes that

the advertisements indicated that the contractors have Vietnam-era veterans and combat veterans on their staffs; thus, TCS contends, if the contractors do not have Vietnam-era or combat veterans on their staffs, the statements are misleading. This argument fails to state a basis for protest since it does not concern the content of a solicitation or the award of a contract; accordingly, we will not consider it.

Finally, the protester requests that we undertake an investigation of all of the outpatient psychiatric and social services contracts awarded by the Olin E. Teague Veterans Center with a view toward determining whether any health care providers have received favored treatment in the award process. Our Office does not conduct investigations as part of our bid protest function. Liberty Assocs., Inc., B-232650, Jan. 11, 1989, 89-1 CPD ¶ 29.

The protest is dismissed.


Christine S. Melody
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